

E-FILED on 7/24/06

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

OMAR F. MOUSA,

Plaintiff,

v.

STATE OF CALIFORNIA; SANTA CLARA  
COUNTY DISTRICT ATTORNEY;  
DEPARTMENT OF REVENUE;  
PROBATION DEPARTMENT

Defendant.

No. C-06-01992 RMW


ORDER DISMISSING CASE

Omar Mousa initiated this action on March 15, 2006, five days after Judge Arthur Weissbrodt dismissed his complaint against the Santa Clara County District Attorney's Office and Martha Donohoe. *See* Adv. Proc. No. 05-53923, docket no. 59 (N.D. Cal. Bankr. Mar. 10, 2006). This court has previously denied Mousa's application to proceed *in forma pauperis*. After this court affirmed its original denial of Mousa's application, he filed an amended complaint (adding to the caption a request for habeas corpus relief, even though he is not in custody) and a new application to proceed *in forma pauperis*.

As previously noted, there is no basis for federal-court jurisdiction over Mousa's petition for a writ of mandate or prohibition. His habeas petition appears fatally defective because he

1 alleges that he is not in custody.<sup>1</sup> See 1st Am. Compl. at 8; *De Long v. Hennessey*, 912 F.2d 1144,  
 2 1146 (9th Cir. 1990). Mousa's action is therefore dismissed in its entirety and with prejudice to  
 3 refiling.<sup>2</sup> His latest application to proceed *in forma pauperis* is denied. Mousa is not given leave  
 4 to amend as it appears that future attempts to state a claim would be futile. The clerk shall close  
 5 the file.

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 8 DATED: 7/21/06

  
 RONALD M. WHYTE  
 United States District Judge

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 25 <sup>1</sup> In addition to not being in custody, it does not appear Mousa has exhausted state remedies, which  
 prevents this court from considering his habeas petition. See 28 U.S.C. § 2254(b), (c); *Rose v.*  
 26 *Lundy*, 455 U.S. 509, 515-16 (1982).

27 <sup>2</sup> The court also notes Mousa appears to be litigating the same issues here that he has lost on before  
 the bankruptcy court in Case No. 05-53923 (closed April 22, 2006) and related adversary proceeding  
 No. 05-05471 (closed March 28, 2006). On March 28, 2006, Mousa initiated related adversary  
 28 proceeding No. 06-05084 against Santa Clara County District Attorney's Office and Martha  
 Donohoe (the same defendants as in adversary proceeding No. 05-05471).

1 **This document will be sent to:**

2 **Plaintiff:**

3 Omar F. Mousa  
4 109 Town & County Village  
5 Sunnyvale, CA 94086

6 Counsel are responsible for distributing copies of this document to co-counsel that have not  
7 registered for e-filing under the court's CM/ECF program.

8 **Copies of this order will be sent to:**

9 The Honorable Arthur S. Weissbrodt  
10 United States Bankruptcy Court for the Northern District of California  
11 280 South First Street  
12 San Jose, CA 95113

13 USBC Manager-San Jose  
14 United States Bankruptcy Court for the Northern District of California  
15 280 South First Street , Room 3035  
16 San Jose, CA 95113

17 **Dated:** \_\_\_\_\_

18 Chambers of Judge Whyte